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10/023,241	12/17/2001	Philip M. Ginsberg	01-1016	3705
63710 7590 07/08/2008 DEAN P. ALDERUCCI CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER DASS, HARISH T				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **DETAILED ACTION**

1. This office action is in response to applicant's communication (remarks) of 5/1/2008.

**2. Status of Claims:**

Claims 1-12, 14-22, 24, 26, 28-31, 34-36, 38-42, 44-49, 54 are canceled.

Claims 13, 23, 26, 27, 32-33, 37, 43, 50-53, 55-77 are pending.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The system claims 13 is non-statutory because it is directed non-descriptive material and does not claim any structure (software per se), lacking storage on a medium (basically no hardware), which enables any underlying functionality to occur. It is not clear whether instructions are in executable form and therefore there is no practical application.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13, 55-63 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, claim 13 (line 2) recites in the limitations "a plurality of communication links", the body of the claim does not contain any limitations indicating the structure of the device. A system or an apparatus claim should always claim the structure or the hardware that performs the function.

Claim 13 (line 6) recites "a commission processing module", consist of module (software according to the specification) that does not describe the structure of the device that performs the function. A system or an apparatus claim should always claim the structure of device that performs the function. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13, 23, 25, 32-33, 55-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros et al (hereinafter Gianakouros-US 2002/0055901) in view of Anthonyson (US 5,414,624).

Re. Claim 13, Gianakouros discloses method and system, a plurality of communications links designed to communicate trade information to and from a plurality of workstations, the trade information comprising information describing orders in an electronic market for items offered for sale or bid to buy, at least some of the trade information to be presented to the workstations and a commission processing module designed to receive information relating to execution of trades in the items, and to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [see at least - Figure 2; paragraphs 20 "broker will be ... commissionable trade in shortest amount of time", 57 "the commission is the charge per share ... depends on a number of factors ...broker.", 80];

Gianakouros does not explicitly disclose commission of a trade based at least in part on one or more characteristics from the group consisting of the time of the trade, day of the trade, location of a trade, and the customer trading location.

However, commissions and fees are known where customers are charged for services by service provider. Similarly, it is known that there are two ways broker make money (income), for his/her service, from charging a commission or spreads between buying price and selling price, where commission charges may be based on different criteria.

Anthonyson (analogous art - collecting fee for service) discloses automatic vehicle parking system using computer and control processor and commission (charge a fee or parking fee) of a trade (parking transaction) based at least in part on one or

more characteristics from the group consisting of the time of the trade (the hour, by the day, ... daytime), day of the trade (the hour, by the day, ... daytime only, weekend ...), or location of a trade (parking facility) [Figures 1, 4; col. 6 lines 18-34; col. 8 line 56 through col. 9 line 13]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Gianakouros and include commission of a trade (parking fee) based at least in part on one or more characteristics (a number of factors) from the group consisting of the time of the trade, day of the trade, and location of a trade ("the hour, by the day, ... daytime only, weekend ..."; "parking facility"), as disclosed by Anthonyson, to allow individuals to benefit from different type of service provided by the service provider to optimize its cost with respect to service customer gets.

Re. Claims 23 and claim 25 are rejected with same rationale as claim 13.

Re. Claims 32-33, Gianakouros wherein the commission is further based on whether at least one of said two customers was active or passive during said trade [see at least claim 21], and wherein the commission is further based on a class which includes said item [paragraph (para.) 23-33 and commission, equity, stocks].

Re. Claims 55-69, Gianakouros discloses sell and buy side of a security (items similar to said item being traded by said customer were traded by other customers at the time, day, or location said item was traded by said customer) and customer for participating in

at least part of said trade [abstract; para. 33; 40]. Anthonyson discloses trading charges based in part on time, location, level of liquidity, etc as disclosed above. Spread is known, the more the spread more is the commission (see above). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and include commission & fee bases (see above), as discloses by Anthonyson, to be paid by the trader as trader and broker have agreed between them to compensate the broker for his/her services.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros and Anthonyson, as applied to claim 25 above and further in view Koppelman et al. (hereinafter Koppelman – US 6,662,164).

Re. Claim 27, Koppelman discloses assigning at least one of said two customers (buyer/seller) said commission based on the one or more attributes of the trade; and presenting said commission to said at least one of said two customers [Figure 2; Abstract; col. col. 2 line 48 through col. 3 line 10]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and Anthonyson and include the distribution commission (display commission) as disclosed by Koppelman to inform the client what he is paying for trading and allow him/her to choose to execute a trade or not.

8. Claims 37, 43, 50-53, and 70-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros, Anthonyson and Koppelman.

Re. Claim 37, Gianakouros discloses providing control logic designed to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer, based at least in part on one or more attributes of a trade of an item arranged by a computer system between at least two customers. Anthonyson disclose one or more attributes being drawn from the group consisting of the time of the trade, day of the trade, location of the trade, and customer trading location [see above].

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and include commission of a trade (parking fee) based at least in part on one or more characteristics (a number of factors) from the group consisting of the time of the trade, day of the trade, and location of a trade ("the hour, by the day, ... daytime only, weekend ..."; "parking facility"), as disclosed by Anthonyson, to allow individuals to benefit from different type of service provided by the service provider to optimize it cost with respect to service customer gets and agrees to compensate the provide for services.

Koppelman discloses storing in the memory\_ of the computer system for offset against future commissions an amount of a reward based at least in part on the characterized attribute of the trade. It would have been obvious at the time the invention

was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and Anthonyson and include the above features disclosed by Koppelman to evaluate desired level of performance earn by the recipients and provide credit incentive toward future trading in form of reward.

Re. Claim 43, Gianakouros discloses wherein the commission is further based on whether said customer was active or passive during said trade.

Re. Claims 50-53 and 70-77, Gianakouros discloses sell and buy side of a security (items similar to said item being traded by said customer were traded by other customers at the time, day, or location said item was traded by said customer) and customer for participating in at least part of said trade [abstract; para. 33; 40] and level of liquidity [para. 6, 57]. Anthonyson discloses trading charges based in part on time, location, etc as disclosed above. Spread is known, the more the spread more is the commission (income). Gianakouros or Anthonyson does not explicitly disclose determining said reward, reward comprises determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer. However, assign new customer for rebates and credit (determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer) are known. For example, most of stores provide incentive to new customer to apply for store credit card and they will



receive 10% credit and rebates for using their cards. It is obvious that to attract new customer and compete with others, store provide these incentives. Koppelman discloses determining said reward, reward [see supra]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and Anthonyson and include the above feature disclosed by Koppelman in order to calculate the rewards and bonus for eligible clients based on clients activity.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

#### **Conclusion**

6. Claims 13, 23, 25, 27, 32-33, 37, 43, 50-53, 55-77 remain rejected under 35 USC 103(a), claim 13 is rejected under USC 101 (software per se) and claims 13, 55-63 are rejected under 35 USC 112 2nd paragraph.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR ' 1.111 (c) to consider the references fully when responding to this action.

Smart computing (Smart computing "Buy & Sell Stock Online"; Recreation July 2000 • Vol.6 Issue 7 Page(s) 116-121 in print issue) discloses buy & sell stock online

and selecting an Internet broker with different commission fees they charge per transaction such as size of trade, type of security, active trader, etc.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T. Dass whose telephone number is 571-272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Abdi Kambiz can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Harish T Dass/  
Primary Examiner, Art Unit 3692

7/5/08